

# EXHIBIT DDD

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Attorney for Plaintiff  
WAYNE BERRY

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;	)	Civ. No. CV03 00385 SOM-LEK
	)	(Copyright)
Plaintiff,	)	
	)	<b>PLAINTIFF WAYNE BERRY'S</b>
vs.	)	<b>ANSWERS TO POST-</b>
	)	<b>CONFIRMATION TRUST FOR</b>
HAWAIIAN EXPRESS SERVICE,	)	<b>FLEMING COMPANIES, INC.'S</b>
INC., a California corporation; et al.	)	<b>SECOND SET OF</b>
	)	<b>INTERROGATORIES TO</b>
Defendants.	)	<b>PLAINTIFF WAYNE BERRY</b>
	)	

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**PLAINTIFF WAYNE BERRY'S ANSWERS TO  
POST-CONFIRMATION TRUST FOR FLEMING  
COMPANIES, INC.'S SECOND SET OF  
OF INTERROGATORIES TO PLAINTIFF WAYNE BERRY**

COMES NOW Plaintiff Wayne Berry and submits his answers to Post-  
Confirmation Trust for Fleming Companies, Inc.'s Second Set of Interrogatories to  
Plaintiff Wayne Berry as follows:

All correspondence between Lex Smith C&S and any Attorneys for Fleming-PCT.

All correspondence related to the installation of Server 2003 and the formatting of the drives after Judge Mollway ruled they were material evidence.

The Guidance images.

The Kroll images

The C&S computers.

The Server turned over to the master.

All correspondence that in anyway relates to "Berry Technology."

All correspondence between Fleming and C&S.

All correspondence between Fleming and Guidance.

All correspondence between Fleming and Alix Partners.

All correspondence between Fleming and the Committee.

#### **INTERROGATORY NO. 17**

State all facts in support of your claims in Count IV (Misappropriation of Trade Secrets) against Fleming.

#### **ANSWER:**

During the time that API used Mr. Berry's software, the Freight Control System and its related programs were located in a server in Mr. Berry's house, password protected and no copies were ever given to API. Mr. Berry took all reasonable steps to protect his trade secrets that include the manner in which he organizes freight consolidation that as a matter of law is his original work.

When he agreed to allow Fleming to use a loaned copy of his works as an interim measure, he did so under his EULA that specifically claimed copyright and trade secret protection, and Fleming in its acceptance of the EULA agreed to protect his works

Mr. Berry hand delivered copies of his EULA to all of the former API employee who would continue to have access to his works all of whom had been covered by an API confidentiality agreement.

Other than making the mistake of believing Fleming and permitting Fleming to possess a loaned copy of his works, Mr. Berry did everything reasonable to protect his trade secrets in his works.

The manner that Mr. Berry organized his database, was derived from his choices and was original. *See* Supplemental Johnson Report. In addition, the other programs that were loaned to Fleming likewise were based on Mr. Berry's own original works.

The Berry software that Flemings unlawfully conveyed to C&S contained software works too numerous to list each one. Mr. Berry therefore, sets forth in this Declaration filed in support of his Motion for Summary Judgment Against All Defendants the categories of programs, gives specific examples and sets forth the predicate for his claim of trade secret protection.

C&S' attorney acknowledged on August 23, 2002 that it would be an infringer if it obtained Mr. Berry's rights as a developer.

It cannot claim to have been mislead into thinking that any transfer of the Berry Technology was authorized. It participated actively in the fraud upon Judge Walrath in order to trick the Bankruptcy court into approving the sale that netted the principal asset of Fleming's wholesale business: an misappropriated copy of the Berry Freight Control System and related programs.

A detailed description of the voluminous categories is included in the Declaration of Wayne Berry filed on April 20, 2005 including the exhibits thereto that are all incorporated by this reference.

**INTERROGATORY NO. 18**

On the Guidance Software "after" image, identify each and every file that you contend constitutes, comprises, refers to, or relates to one of YOUR trade secrets.

**ANSWER:**

Each and every file that Mr. Berry created or was derived from one of his creation is identified. Fleming and C&S have this information but are withholding it from production.

Relevant data has been given to the Discovery Master for in camera inspection and awaits the determination of the Master as to its disposition. Certain categories of data will be produced in the Declaration of Wayne Berry. Mr. Berry reserves the right to designate these materials as Confidential or Highly Confidential - Attorneys Eyes Only.

**INTERROGATORY NO. 19**

For each file identified in response to Interrogatory 18 above, state all facts supporting your contention that such file constitutes, comprises, refers to, or relates to one of YOUR trade secrets.

**ANSWER:**

*See No. 17 above.*

**VERIFICATION**

STATE OF HAWAII )

COUNTY OF HONOLULU )

Wayne Berry, being first duly sworn upon oath, deposes and says that he has read the foregoing answers to interrogatories, knows the contents thereof and that the same are true to the best of his/her knowledge and belief.

Wayne Berry

Subscribed and sworn to before me

this 22nd day of April, 2005

Jane Sung

Print Name: Jane Sung

Notary Public, State of Hawaii

My commission expires 3/18/2009

